



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.6784 of 2016

and

W.M.P. (MD)No.5844 of 2016

B.Jaya Sudhagar ... Petitioner

vs

1. The Joint Director,
Medical and Rural Health Service Department,
Office at Nagercoil,
Kanyakumari District.

2. The Medical Officer,
Government Hospital,
Boothapandi,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the first respondent herein vide Na.Ka.No.2697/Ne.2/2015 dated 14.09.2015 and quash the same and further direct the first respondent herein to pass appropriate orders to regularize the petitioner's service as Radiographer in Government Hospital, Boothapandi, Kanyakumari District.

For Petitioner : Mr.D.Nallathambi

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This writ petition is filed challenging the impugned order, dated 14.09.2015.

2. The petitioner was appointed as Radiographer in Puliyanakudi Government Hospital and he was served with another posting order to join duty in Kuzhithurai Government Hospital. In the year 2012, the



petitioner was transferred to Boothapandi Government Hospital, since he was a heart patient he refused to join Boothapandi Government Hospital. The contention of the petitioner is that after two years of probation, his service ought to be regularized and necessary papers were forwarded to the first respondent. By the proceedings, dated 25.01.2012, the papers were returned for several clarifications. The petitioner has rectified and re-submitted all the relevant records on 02.01.2014. The second respondent has forwarded those certificates to the first respondent only on 20.08.2014 and the same was received by the first respondent on 22.08.2014. This recommendation was also returned on 26.08.2014. Again, it was forwarded on 26.06.2015. In the returned order, dated 26.06.2015 it was stated that the petitioner's service cannot be regularized in view of pendency of writ petition in W.P. (MD) No.17287 of 2014. In the said writ petition, the petitioner has challenged the disciplinary proceedings initiated in Na.Ka.NO.2171/Ne.2/2014, dated 23.09.2014. Originally, the first respondent has issued a communication dated 30.12.2013 allotting an additional duty, posting the petitioner and two others in other Hospitals. In the said communication, the petitioner was posted in Kulasekaram Government Hospital for weekly two days only. On 19.08.2014, the petitioner was served with a Memo stating that the petitioner submitted the Xerox copy of the said communication of the first respondent dated 30.12.2013 to some third party and on the basis of the Xerox copy, some applications were made under Right to Information Act, thereby the petitioner has violated the Service Rules and hence issued a show cause notice for disciplinary action. The communication dated 30.12.2013 referred in Memo was served upon the concerned Medical Officers and two other Radiographers other than the petitioner.

3. The contention of the petitioner is that, those Xerox copies might have taken by the third party, while papers were given for photo copying. The petitioner has submitted the explanation dated 08.09.2014 and after the explanation, the respondents issued a show cause notice dated 23.09.2014 directing the petitioner to submit the explanation within three days or the disciplinary action will be initiated. Aggrieved over the show cause notice, the petitioner has filed a writ petition in W.P.(MD)NO.17287 of 2014.

4. The first respondent has filed a counter affidavit stating that the petitioner has manipulated certain records and made changes in the notices and given the same to some third party. Since the official communication has been hand over to the third parties which is against the Service Rules. If an Officer in-charge sends the communication to his Sub-ordinates, the Sub-ordinate has to answer the same. But the petitioner has done mischief by asking some third party to file an application under Right to Information Act, seeking some documents which is an official communication. The said



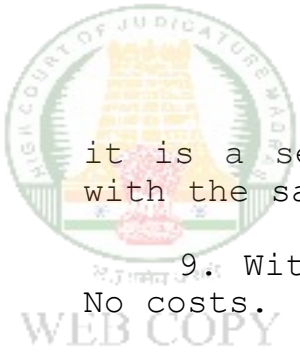
conduct is totally against the basic service rules. Hence the disciplinary authority has initiated the action and only the show cause notice was issued. The petitioner has threatened his Superior indirectly and also by way of explanation on 08.09.2014. The petitioner has misappropriated x-ray film collection amount to the tune of Rs.560/- (Rupees Five Hundred and Sixty Only) in the Boothapandy Government Hospital and when it was questioned by the Audit and the petitioner abused the audit in filthy language and threatened the Higher Officials. Because of the behavior and grave misconduct, domestic enquiry was initiated and it is only in the initial stage. The disciplinary proceedings were initiated by the Higher Authority DMS Chennai and Health Secretary Chennai. The petitioner never gave explanation to the said proceedings but approached the High Court. Hence the respondents prayed to dismiss the writ petition.

5. Heard Mr.D.Nallathambi, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

6. The learned Special Government Pleader appearing for the respondent has submitted an order was passed in W.P.(MD)No.17287 of 2014 and in that order, the learned Counsel for the petitioner did not appear and the writ petition was dismissed for non-prosecution on 16.07.2019.

7. When the present writ petition was taken up for hearing on 07.02.2022, there was no representation and the case was posted on 23.02.2022. On that day also there was no representation and again the case was posted on 25.02.2022 under the caption "For dismissal". Today when the matter was taken up for hearing, the learned Counsel for the petitioner has appeared and prayed for time.

8. On perusal of the records, this Court is of the considered opinion that the petitioner is seeking regularization and the respondents through the impugned order has stated that because of the pendency of writ petition in W.P. (MD) No. 17287 of 2014, regularization cannot be considered. But the writ petition was dismissed on 16.07.2019 for non-prosecution. The said writ petition was filed challenging the show cause notice, this Court in several cases has held that show cause notice, Charge Sheet and Charge Memo cannot be challenged. Therefore, the petitioner is directed to appear before the authorities and submit an explanation for the show cause notice. As far as the regularization is concerned, there is no pendency of any writ petition and the respondents are directed to consider the case of the petitioner in accordance to law. If the petitioner is coming under the zone of consideration for regularization, the respondents may grant regularization. As far the Disciplinary proceedings are concerned,



it is a separate issue and the respondents are directed to deal with the same in accordance to law.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Joint Director,
Medical and Rural Health Service Department,
Office at Nagercoil,
Kanyakumari District.

2.The Medical Officer,
Government Hospital,
Boothapandi,
Kanyakumari District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-8809[F] dated 25/02/2022)

+1 CC to M/s.SPL GP (SR-8933[F] dated 28/02/2022)

W.P. (MD)No.6784 of 2016

25.02.2022

MGJ(18.03.2022) 4P 5C